IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE

(July 20, 1998 Session)

FILED

October 12, 1998

Cecil W. Crowson
Appellate Court Clerk

RICHARD LEE BENNETT,	)	RUTHERFORD CHANCERY
	)	
Plaintiff/Appellant	)	NO. 01S01-9710-CH-00236
	)	
v.	)	
	)	HON. JAMES WEATHERFORD,
BRIDGESTONE, U.S.A., INC.	)	JUDGE
	)	
Defendant/Appellee	)	

For the Appellant:	**For the Appellee:**
Wm. Kennerly Burger	Kitty Boyte
SunTrust Bank Building	Kimbra Spann
Suite 306	150 Second Avenue North
201 E. Main Street	Suite 201
P. O. Box 1969	Nashville, TN 37201
Murfreesboro, TN 37133-1969	

M E M O R A N D U M O P I N I O N:

Members of Panel:

Judge Ben H. Cantrell
Senior Judge William H. Inman
Special Judge Joe C. Loser, Jr.

AFFIRMED **INMAN, Senior Judge**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance

with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The issue in this case is whether the trial judge properly dismissed the complaint owing to the failure of the plaintiff to prove by a preponderance of all the evidence that his disability was job-related. Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(e)(2). *Stone v. City of McMinnville,* 896 S.W.2d 548, 550 (Tenn. 1995).

I

The complaint alleged that the plaintiff experienced a 'work-related event' in November 1994 which worsened a 'progressively deteriorating back disease.' He is 44 years old and has worked at Bridgestone/Firestone, Inc. continuously from 1985 through April 20, 1996. The onset of back problems was traced to 1988, with no history of a specific injury at any time.

On November 5, 1994, he was working in the curing department at Bridgestone when he suddenly could not lift any more tires. At his request, his supervisor helped him complete his work that shift, and he took a vacation day the following day. No particular event or incident caused his inability to work, although two days earlier he had presented himself at the Health Unit at Bridgestone, where he gave a history of back pain for three years and that the pain originally began on "4/11/88." Four days later he again visited the Health Unit for ongoing back pain.

Plaintiff first saw Dr. Gregory Lanford on November 14, 1994, to whom he gave a history of three years of back pain with no precipitating trauma. He

was diagnosed with degenerative disc disease, and complained of pain from standing and walking, not associated with work-related activity.

Plaintiff reached maximum medical improvement and returned to work at Bridgestone on July 16, 1995, with some lifting restrictions. He resumed working in the curing department operating a fork-lift and again experienced pain. He was then moved to a sedentary job as a key booth operator.

At his attorney's request, plaintiff was evaluated by Dr. Richard Fishbein in January 1996, who opined that plaintiff suffered a ten percent impairment to the body as a whole from a traumatic episode related to him by plaintiff which occurred in 1994. When plaintiff filled out the informational form on his history, he identified the onset of his back problems as "5/11/94."

In Dr. Fishbein's first deposition, he related this date as May 11, 1994. In a later deposition, he testified that plaintiff had since explained to him that that date should have been November 5, 1994, not May 11, 1994. He testified that there was a causal link between the traumatic injury plaintiff suffered and his back problems but admitted that plaintiff's symptoms are classic symptoms of degenerative disc disease. The rating he gave was based on the symptoms.

The trial court found no proof of a causal relationship between the plaintiff's employment and his physical condition.

II

Plaintiff argues that his back problems result from his employment at Bridgestone/Firestone because he suffers from a progressive, advancing degenerative disease of his back which became disabling after a "pulling" episode on November 5, 1994. He has suffered back problems since 1988 when, according to his testimony, he was pulling rubber apart and encountered a shooting pain through his hip. Plaintiff testified that from 1988 to 1994, his

back pain did not interfere with his work until November 1994, when he was unable to lift a tire.

Plaintiff did not go to the Health Unit until November 7, 1994. At that time, he reported that he had had pain for three years which originally began on April 11, 1988. There was no mention in the log of an incident occurring on November 5, 1994.

On cross-examination, he admitted that, in his prior deposition, he testified that there was no specific injury in 1988 or since that time and that there was no particular event or incident which increased his back pain or brought about his inability to work.

Dr. Lanford testified that degenerative disc disease could cause pain from everyday activities and a loss of range of motion similar to that suffered by plaintiff. As plaintiff's treating physician, Dr. Lanford assigned him a seven percent permanent impairment to his body as a whole, based upon complaints of pain secondary to degenerative disc disease, but emphasized that he was not aware of a particular traumatic event that caused plaintiff's problem.

Dr. Fishbein first saw plaintiff in January 1996. He opined that plaintiff suffered a ten percent permanent impairment to the body as a whole from a traumatic episode related to him by plaintiff, which occurred in 1994 and that there was a causal link between the traumatic injury plaintiff allegedly suffered and his back problems. Dr. Fishbein based his opinion on statements made to him by the plaintiff that he had suffered a traumatic injury in 1994, when he was lifting a tire track to position it and experienced low back pain. These statements were contrary to the plaintiff's testimony that there was no particular event which caused his increase in pain. Dr. Fishbein testified that plaintiff's symptoms are classic symptoms of degenerative disc disease.

Plaintiff does not demonstrate that the evidence preponderates against the trial court's judgment finding a lack of causal connection between his work activities and his degenerative back condition. Dr. Fishbein's opinion on causation is based on an alleged traumatic event, which the plaintiff testified did not occur, a point that did not escape the attention of the trial judge.

III

Plaintiff must prove by expert medical testimony a causal relationship between his disability and his job activity. While absolute certainty is not required for medical causation, the proof must not be so speculative or uncertain that attributing the injury to the plaintiff's job would be an arbitrary opinion or a mere possibility. *Tindall v. Waring Park Assoc.*, 725 S.W.2d 935, 937 (Tenn. 1987).

The trial court accredited the testimony of Dr. Lanford, the treating physician, over that of Dr. Fishbein, who saw plaintiff for the first time in January 1996. Moreover, the issue of credibility permeates this record. Where the trial judge has made a determination based upon the testimony of witnesses whom he has seen and heard, great deference must be given to that finding in determining whether the evidence preponderates against the trial judge's determination. *See Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987).

When he saw Dr. Lanford, the plaintiff made no mention of any event on November 5, 1994. When he saw Dr. Fishbein in June 1996, he identified the onset of his problems as "5/11/94." Plaintiff explained that he used 'military time' for this date, although he admitted that another date that he placed on the same form was not in military format. The history that he gave Dr. Fishbein also included information that he had lifted a tire track to position it and

experienced low back pain. This version of events differs from all the other versions given by plaintiff. Plaintiff also did not mention a motor vehicle accident with resulting pain in his neck, thoracic and lumbar spine, either in his deposition or in his direct testimony at trial.

For the foregoing reasons, we are unable to find that the evidence preponderates against the judgment which is affirmed at the costs of the appellant.

_____
William H. Inman, Senior Judge

CONCUR:

_____
Ben H. Cantrell, Judge

_____
Joe C. Loser, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

RICHARD LEE BENNETT,	*}*	*RUTHERFORD CHANCERY*
	}	*No. 95WC-933 Below*
Plaintiff/Appellant	*}*	
	}	*Hon. James Weatherford*
vs.	*}*	*Judge*
	}	
BRIDGESTONE, U.S.A., INC.,	*}*	*No. 01S01-9710-CH-00236*
	}	
Defendant/Appellee	*}*	*AFFIRMED*

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by Plaintiff/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on October 12, 1998.

PER CURIAM